

1 Title 5, California Code of Regulations

2 Division 1, Chapter 11, Subchapter 19

3 Charter Schools

4 **Add Article 1.5 (commencing with Section 11963) to read:**

5 **Article 1.5. Classroom- and Nonclassroom-Based Instruction in Charter Schools.**

6 **§11963. Definition of Classroom-Based Instruction.**

7 (a) In accordance with the definition of classroom-based instruction specified in Education
8 Code section 47612.5(e)(1), and for purposes of identifying and reporting that portion of a
9 charter school's average daily attendance that is generated through nonclassroom-based
10 instruction pursuant to Education Code sections 47634.2(c) and 47612.5(e)(2), classroom-based
11 instruction in a charter school occurs only when all four of the following conditions are met.

12 (1) The charter school's pupils are engaged in educational activities required of those
13 pupils, and the pupils are under the immediate supervision and control of an employee of the
14 charter school who is authorized to provide instruction to the pupils within the meaning of
15 Education Code section 47605(I).

16 (2) At least 80 percent of the instructional time offered at the charter school is at the
17 schoolsite.

18 (3) The charter school's schoolsite is a facility that is used principally for classroom
19 instruction.

20 (4) The charter school requires its pupils to be in attendance at the schoolsite at least 80
21 percent of the minimum instructional time required pursuant to Education Code section
22 47612.5(a)(1).

23 (b) The requirement to be "at the schoolsite" is satisfied if either of the following
24 conditions is met.

25 (1) The facility in which the pupils receive instruction is:

26 (A) Owned, rented, or leased by the charter school principally for classroom instruction;

27 (B) Provided to the charter school by a school district pursuant to Education Code section
28 47614 principally for classroom instruction; or

29 (C) Provided to the charter school free-of-charge principally for classroom instruction
30 pursuant to a written agreement.

1 When not being used by the charter school for classroom instruction, the facility may be
2 rented, leased, or allowed to be used for other purposes (e.g., for evening adult classes not
3 offered by the charter school, local theater productions, or community meetings) and still be
4 deemed to be principally for classroom instruction.

5 (2) The charter school facility meets the criteria in paragraph (1) and the pupils are on a
6 field trip during which the pupils remain under the immediate supervision and control of the
7 employee of the charter school and are carrying out an educational activity required of the pupils.

8 (c) The requirement to be “at the schoolsite” is not satisfied if the pupils are in a personal
9 residence (i.e., a dwelling), even if space in the residence is set aside and dedicated to
10 instructional purposes and/or the charter school rents or leases space in the residence for the
11 provision of instruction. As used in this subdivision, a personal residence shall not include a
12 facility that is licensed by a state or local government agency to operate as a facility in which
13 pupils not related to the facility’s owners are provided custodial care and supervision (e.g., a
14 licensed children’s institution or a boarding school).

15 (d) The definitions in this section are solely for the purpose of determining if a charter
16 school must submit a determination of funding request pursuant to Education Code section
17 47634.2.

18 NOTE: Authority cited: Sections 33031, 47612.5 and 47634.2, Education Code; and Section 6
19 of Chapter 892, Statutes of 2001 (Senate Bill 740). Reference: Sections 47605, 47612.5, and
20 47634.2, Education Code.

21 **§11963.1. Nonclassroom-Based Instruction in Charter Schools.**

22 This article does not change the requirement that nonclassroom-based instruction in charter
23 schools comply with the provisions of Article 5.5 (commencing with Section 51745) of Chapter
24 5 of Part 28 of the Education Code.

25 NOTE: Authority cited: Sections 33031 and 47612.5, Education Code; and Section 6 of Chapter
26 892, Statutes of 2001 (Senate Bill 740). Reference: Article 5.5 (commencing with Section
27 51745) of Chapter 5 of Part 28; and Section 47612.5, Education Code.

28 **§11963.2. Average Daily Attendance for Nonclassroom-Based Instruction in Charter**
29 **Schools.**

30 (a) A charter school may receive funding for nonclassroom-based instruction only if a

determination of funding is made pursuant to Education Code section 47634.2. A determination of funding is a specific percentage approved by the State Board of Education for each affected charter school by which the charter school's reported nonclassroom-based average daily attendance must be adjusted by the Superintendent of Public Instruction prior to the apportioning of funds based upon that average daily attendance. A determination of funding shall only be approved by the State Board for a charter school if the charter school has submitted a request.

(1) For 2001-02, a determination of funding approved by the State Board of Education shall be not less than 95 percent and not more than 100 percent. ~~If, by March 19, 2002, the State Board of Education does not act on a substantially complete determination of funding request that was submitted by a charter school by February 13, 2002, then the charter school's approved determination of funding (for 2001-02 only) shall be 100 percent.~~

(2) For 2002-03, a determination of funding request approved by the State Board of Education shall be 80 percent, unless a ~~different~~ greater or lesser percentage, ~~which shall not be greater than 100 percent,~~ is determined appropriate pursuant to by the State Board of Education in accordance with the provisions of Section ~~41963.3~~ 11963.4. In no case shall an approved determination of funding exceed 100 percent.

(3) For 2003-04 and each fiscal year thereafter, a determination of funding request approved by the State Board of Education shall be 70 percent, unless a ~~different~~ greater or lesser percentage, ~~which shall not be greater than 100 percent,~~ is determined appropriate pursuant to by the State Board of Education in accordance with Section ~~41963.3~~ 11963.4. In no case shall an approved determination of funding exceed 100 percent.

(4) Beginning with the 2002-03 fiscal year, an approved determination of funding shall be for at least one fiscal year, but shall be for not more than five fiscal years. A determination of funding shall be subject to review each time a material change is made in the school's charter with respect to non-classroom based instruction, ~~and~~ each time the school's charter is renewed, and/or in accordance with any conditions the State Board of Education may impose at the time of the determination of funding request's approval. A material change in the school's charter with respect to nonclassroom-based instruction is any significant change that affects ~~any of the following: (A) L the level of resources devoted to nonclassroom-based instruction; (B) C the~~ courses to be offered through nonclassroom-based instruction; ~~and/or the (C) D delivery of~~

1 educational services to pupils receiving nonclassroom-based instruction. The charter school
2 shall notify the California Department of Education no later than thirty (30) days after the
3 material change is made.

4 NOTE: Authority cited: Sections 33031 and 47634.2, Education Code. Reference: Sections
5 47634.2 and 51745.6, Education Code.

6 **§11963.3. Determination of Funding Request Forms and Calculations.**

7 ~~(b)~~ (a) For purposes of submitting a determination of funding request, the California
8 Department of Education shall issue a form or set of forms to collect the information specified in
9 this subdivision. Unless otherwise indicated, the forms charter schools submitting a
10 determination of funding request shall be completed the form or forms in accordance with the
11 definitions used in Part II of the 2001 edition of the California School Accounting Manual
12 (which can be obtained from the California Department of Education web site at:
13 www.cde.ca.gov/fiscal/sacs/csam). The form or forms shall be developed by the California
14 Department of Education in consultation with the Advisory Commission on Charter Schools
15 ~~which shall be established by the State Board of Education.~~ The form or forms shall include all
16 of the following and, to the extent the form or forms include more than the following, the form or
17 forms shall require the approval of the State Board of Education and comply with applicable
18 provisions of the Administrative Procedure Act.

19 (1) The name, charter number, address, telephone number, fax number, and email address,
20 if any, for the charter school, and a contact person.

21 (2) The percentage requested by the school as its determination of funding.

22 ~~(2)(3) If for 2002-03 or~~ For 2002-03 or and each fiscal year thereafter, the fiscal years for which the
23 determination of funding is requested, which shall not exceed five years.

24 ~~(3)(4)~~ The effective term of the charter.

25 ~~(4) The percentage requested by the school as its determination of funding.~~

26 (5) For charter schools that operated in the prior fiscal year, all of the following:

27 (A) The school's total public charter school revenues resources, including all federal
28 revenue, with federal Public Charter School Grant Program start-up, implementation, and
29 dissemination grants separately identified; all state revenue excluding start-up, implementation,
30 and dissemination grants; and all local revenues with from in-lieu property taxes separately

1 identified; other financing sources; and the ending balance from the prior fiscal year..

2 (B) The school's total expenditures for salaries and benefits for all employees who possess
3 a valid teaching certificate, permit, or other document equivalent to that which a teacher in other
4 public schools would be required to hold issued by the Commission on Teacher Credentialing.

5 (C) A calculation showing the total salaries and benefits for certificated employees as
6 determined in sub paragraph (B), as a percentage of total public revenues as determined in sub-
7 paragraph (A).

8 (6) If the amount calculated in subparagraph (C) of paragraph (5) is less than 50 percent,
9 supplemental financial information for the prior fiscal year shall be presented as follows to
10 enable a funding determination recommendation to be made:

11 (A) The school's total federal, state, and local revenues, and other financing sources.

12 (B) The school's total expenditures for instruction and related services, by object of
13 expenditure, which shall include all of the following:

14 1. Activities dealing with the interaction between teaching staff and students, without
15 regard to the instructional location or medium.

16 2. Services that provide administrative, technical, and logistical support to facilitate and
17 enhance instruction.

18 3. Services in direct support of students.

19 4. School-sponsored extra-curricular or co-curricular activities designed to provide
20 motivation and enjoyment and improvement of skills.

21 (C) The school's total expenditures for schoolsite and administrative site operations and
22 facilities, by object of expenditure, which shall include all of the following:

23 1. Activities concerned with securing and keeping open and working the physical plants,
24 grounds, and equipment necessary for the operation of the school.

25 2. Facility rents, leases, and utilities.

26 3. Facilities acquisition and construction.

27 (D) The school's total expenditures for administration and all other activities, by object of
28 expenditure, which shall include all of the following:

29 1. Activities concerned with establishing and administering policy for operating the entire
30 charter school, such as the governing board, director, and administrative staff.

1 2. Other general administration activities, such as payroll and accounting services, auditing
2 and legal services, property and liability insurance, personnel, charter-wide telephone service,
3 and data processing services.

4 3. Supervisorial oversight fees charged by the chartering authority.

5 4. Other expenditures not reported elsewhere, such as those for community services and
6 enterprise activities.

7 (E) Other outgo and other uses, including debt service payments and transfers.

8 (F) The excess (or deficiency) of revenues over expenditures calculated by subtracting the
9 total of subparagraphs (B), (C), (D), and (E), from the total resources reported pursuant to
10 subparagraph (A), and a list of the amount of reserves for: facilities acquisition or construction,
11 economic uncertainties, the amount required by the charter-authorizing entity, or other reserves.

12 ~~(7)(6) For charter schools that did not operate in the prior fiscal year, both the funding~~
13 ~~determination calculation in sub-paragraph (C) of paragraph (5) of subdivision (b) and the~~
14 ~~supplemental financial information in paragraph (6) of subdivision (b) are required, the revenue~~
15 ~~and expenditure information required in paragraph (5) shall be provided using reasonable~~
16 ~~estimates of current-year annualized revenues and expenditures. Current year financial~~
17 ~~information is not required for other charter schools, but is encouraged to assist with the~~
18 ~~evaluation of the determination of funding request.~~

19 ~~(8) The charter school's teacher-pupil ratio calculated pursuant to Section 11704 and~~
20 ~~Education Code section 51745.6.~~

21 ~~(9) The number of full-time equivalent employees who possess a valid teaching certificate,~~
22 ~~permit, or other document equivalent to that which a teacher in other public schools would be~~
23 ~~required to hold issued by the Commission on Teacher Credentialing.~~

24 ~~(e)(b) In addition to the form or forms prescribed pursuant to subdivision (b)(a), a complete~~
25 ~~determination of funding request shall also include the following information. Only a~~
26 ~~determination of funding request that is determined to be substantially complete may be acted~~
27 ~~upon by the State Board of Education.~~

28 (1) A certification of the following:

29 (A) That the information provided is true and correct to the best of the ability and
30 knowledge of the individual authorized to do so by the charter school's governing board.

1 ~~(2)(B) A certification that the charter school's nonclassroom-based instruction is~~
2 ~~conducted for and substantially dedicated to the instructional benefit of the school's students.~~

3 ~~(3)(C) A certification that the governing board of the charter school has adopted and~~
4 ~~implements conflict of interest policies.~~

5 ~~(4)(D) A certification that all of the charter school's transactions, contracts, and~~
6 ~~agreements are in the best interest of the school and reflect a reasonable market rate for all~~
7 ~~goods, services, and considerations rendered for or supplied to the school.~~

8 ~~(2) The charter school's pupil-teacher ratio as calculated pursuant to Education Code~~
9 ~~section 51745.6; and the pupil-teacher ratio of the largest unified school district in the county or~~
10 ~~counties in which the charter school operates, as required by Section 11704.~~

11 ~~(5) A listing of any non-revocable contracts for management services and the annualized~~
12 ~~amount thereof.~~

13 ~~(6) A description of the manner in which the charter school's governing board members are~~
14 ~~selected.~~

15 ~~(7) For purposes of a determination of funding for 2001-02, a copy of the charter school's~~
16 ~~2000-01 independent financial audit required by law, if completed, unless 2001-02 is the charter~~
17 ~~school's first year of operation.~~

18 ~~(8)(3) A listing of entities that received in the previous fiscal year (or will receive in the~~
19 ~~current fiscal year) \$50,000 or more of the charter school's total expenditures identified pursuant~~
20 ~~to subparagraphs (B), (C), (D), and (E) of paragraph (6)(5) of subdivision (b)(a), and the amount~~
21 ~~received by each entity; whether each of the contract payments is based on specific services~~
22 ~~rendered or upon an amount per unit of average daily attendance or some other percentage; and~~
23 ~~an identification of which entities, if any, have contract payments based on a per unit average~~
24 ~~daily attendance amount or some other percentage.~~

25 ~~(4) An identification of the members comprising the charter school's governing board (i.e.,~~
26 ~~parent, teacher, etc.) and a description of how those members were selected; whether the~~
27 ~~governing board has adopted and implemented conflict of interest policies and procedures; and~~
28 ~~whether any of the governing board members are affiliated in any way with any of the entities~~
29 ~~reported pursuant to paragraph (3) and if so, how.~~

30 ~~(5) An explanation of all transfers reported pursuant to subparagraph (E) of paragraph (5)~~

1 of subdivision (a).

2 (6) A list and the amount of each of the other reserves reported pursuant to subparagraph
3 (F) of paragraph (5) of subdivision (a).

4 (7) The total square footage of the facilities of the charter school; the square footage that is
5 used for instruction and related services (as defined in subparagraph (B) of paragraph (5) of
6 subdivision (a)); and the percentage of the school's nonclassroom-based pupils that use the
7 instruction and related space and how frequently.

8 (8) The number of full-time equivalent employees who possess a valid teaching certificate,
9 permit, or other document equivalent to that which a teacher in other public schools would be
10 required to hold issued by the Commission on Teacher Credentialing.

11 (c) The California Department of Education shall perform the following using the resource
12 and expenditure data provided pursuant to subdivision (a).

13 (1) A calculation showing the charter school's total expenditures for salaries and benefits
14 for all employees who possess a valid teaching certificate, permit, or other document equivalent
15 to that which a teacher in other public schools would be required to hold issued by the
16 Commission on Teacher Credentialing as a percentage of the school's total public revenues. For
17 the purposes of this subdivision:

18 (A) "Employees" shall include special education instructors who possess a valid teaching
19 certificate, permit, or other document equivalent to that which special education teachers in non-
20 charter public schools would be required to hold issued by the Commission on Teacher
21 Credentialing, and who provide instruction to pupils of the charter school pursuant to a contract
22 with a public or private entity.

23 (B) "Employees" shall include individuals who possess a valid certificate, permit, or other
24 document equivalent to that which the individuals would be required to possess in a non-charter
25 public school, issued by the Commission on Teacher Credentialing, and who are employed by a
26 local education agency (LEA), provided all of the following conditions are met: the LEA is the
27 employer of all the charter school's staff; the governing board of the LEA is the governing
28 authority for the charter school (i.e., the charter school is not a corporate entity separate from the
29 LEA); and the LEA's employees are assigned exclusively to work at the charter school or, to the
30 extent that the LEA's employees are assigned to work at the charter school on a part-time basis,

1 the charter school pays for the services rendered on a documented, fee-for-service basis and not,
2 for example, on the basis of a fixed annual amount, fixed percentage of average daily attendance
3 revenue, or other basis that is not related to documented services actually rendered to the charter
4 school. Under no circumstances shall certificated employees of an LEA be considered
5 employees of a charter school for purposes of this subparagraph unless the charter school pays
6 for the services rendered by the LEA's employees on a documented, fee-for-service basis.

7 (C) The school's total public revenue is based on the amounts reported pursuant to
8 subparagraph (A) of paragraph (5) of subdivision (a) and equals the sum of: all federal revenue,
9 less any Public Charter School Grant Program start-up, implementation, and dissemination grant
10 funds; state revenue; and local revenue from in-lieu property taxes.

11 (2) A calculation showing the charter school's total expenditures on instruction and related
12 services as a percentage of the school's total revenues. For the purposes of this subdivision, the
13 school's total revenues does not include the ending balance from the prior fiscal year.

14 NOTE: Authority cited: Sections 33031 and 47634.2, Education Code. ~~Section 6 of Chapter 892,~~
15 ~~Statutes of 2001 (Senate Bill 740).~~ Reference: 47634.2 and 51745.6, Education Code.
16 ~~§11963.34. Submission and Evaluation of and Action on Determination of Funding Requests~~
17 ~~Regarding Nonclassroom-Based Instruction.~~

18 (a) When a ~~substantially~~ complete determination of funding request is received from a
19 charter school, it shall be reviewed by the California Department of Education and presented to
20 the Advisory Commission on Charter Schools ~~established by the State Board of Education,~~ along
21 with credible information pertaining to the request obtained from any other source. The
22 Advisory Commission shall develop a recommendation pursuant to this section to the State
23 Board of Education regarding the request ~~pursuant to this section,~~ and that recommendation shall
24 be presented to the State Board of Education by the California Department of Education. The
25 following criteria shall guide the process of reviewing and developing a recommendation on the
26 request, ~~and~~ The California Department of Education shall report any difference of opinion
27 between the California Department of Education and the Advisory Commission as to the
28 recommendation presented to the State Board of Education ~~which is developed pursuant to this~~
29 ~~subdivision shall be reported to the State Board of Education.~~

30 (a) For the 2002-03 fiscal year:

1 (1) If the percentage calculated pursuant to paragraph (1) of subdivision (c) of Section
2 11963.3 equals at least 35 percent but less than 50 percent, and the percentage calculated
3 pursuant to paragraph (2) of subdivision (c) of Section 11963.3 equals or exceeds 55 percent, the
4 Advisory Commission on Charter Schools shall recommend to the State Board of Education
5 approval of the request at 80 percent, unless there is a reasonable basis to recommend otherwise.
6 If the recommended percentage is lower than the requested percentage, the recommendation to
7 the State Board shall include the reasons justifying the reduction, and, if appropriate, describe
8 how any deficiencies or problems may be addressed by the charter school.

9 ~~(1)(2) If the calculation made~~ percentage calculated pursuant to sub-paragraph (C) of
10 paragraph (5)(1) of subdivision (b)(c) of Section 11963.23 indicates that the sum of a charter
11 school's salaries and benefits expenditures for certificated employees (as identified pursuant to
12 sub-paragraph (B) of paragraph (5) of subdivision (b) of Section 11963.2), equals or exceeds 50
13 percent of the school's total public charter school revenue (as identified pursuant to sub-
14 paragraph (A) of paragraph (5) of subdivision (b) of Section 11963.2), and if the determination
15 of funding request is otherwise substantially complete, the Advisory Commission on Charter
16 Schools request shall be recommended for approval to the State Board of Education approval of
17 the request at 100 percent (i.e., full funding), subject to the provisions of subdivision (c), unless
18 there is a reasonable basis to recommend otherwise. The recommendation to the State Board
19 shall include the reasons justifying a percentage that is greater than 80 percent and, if the
20 recommended percentage is lower than the requested percentage, the reasons justifying the
21 reduction and, if appropriate, describe how any deficiencies or problems may be addressed by
22 the charter school.

23 ~~(2)(3) If the percentage calculated~~ calculation made pursuant to sub-paragraph (C) of
24 paragraph (5)(1) of subdivision (b)(c) of Section 11963.23 is less than 35 percent, or the
25 percentage calculated pursuant to paragraph (2) of subdivision (c) of Section 11963.3 is less than
26 55 percent, indicates that the sum of a charter school's salaries and benefits expenditures for
27 certificated employees (as identified pursuant to sub-paragraph (B) of paragraph (5) of
28 subdivision (b) of Section 11963.2) did not equal or exceed 50 percent of the school's total
29 public charter school revenue (as identified pursuant to sub-paragraph (A) of paragraph (5) of
30 subdivision (b) of Section 11963.2), and if the determination of funding request is otherwise

1 substantially complete, it may be determined that the charter school's nonclassroom-based
2 instruction is not substantially dedicated to the instructional benefit of the students, and any of
3 the following actions may be taken the Advisory Commission on Charter Schools shall
4 recommend to the State Board of Education approval of the request at 70 percent, unless there is
5 a reasonable basis to recommend otherwise. The recommendation to the State Board shall
6 include the reasons justifying a percentage that is lower than 80 percent and, if the recommended
7 percentage is lower than the requested percentage, the reasons for the reduction and, if
8 appropriate, describe how any deficiencies or problems may be addressed by the charter school.

9 (b) For the 2003-04 fiscal year and each fiscal year thereafter:

10 (1) If the percentage calculated pursuant to paragraph (1) of subdivision (c) of Section
11 11963.3 equals at least 40 percent but less than 50 percent, and the percentage calculated
12 pursuant to paragraph (2) of subdivision (c) of Section 11963.3 equals at least 60 percent but less
13 than 70 percent, the Advisory Commission on Charter Schools shall recommend to the State
14 Board of Education approval of the request at 70 percent, unless there is a reasonable basis to
15 recommend otherwise. If the recommended percentage is lower than the requested percentage,
16 the recommendation to the State Board shall include the reasons justifying the reduction and, if
17 appropriate, describe how any deficiencies or problems may be addressed by the charter school.

18 (2) If the percentage calculated pursuant to paragraph (1) of subdivision (c) of Section
19 11963.3 equals or exceeds 50 percent, and the percentage calculated pursuant to paragraph (2) of
20 subdivision (c) equals at least 70 percent but less than 80 percent, the Advisory Commission on
21 Charter Schools shall recommend to the State Board of Education approval of the request at 85
22 percent, unless there is a reasonable basis to recommend otherwise. The recommendation to the
23 State Board shall include the reasons justifying a percentage that is greater than 70 percent and,
24 if the recommended percentage is lower than the requested percentage, the reasons justifying the
25 reduction and, if appropriate, describe how any deficiencies or problems may be addressed by
26 the charter school.

27 (3) If the percentage calculated pursuant to paragraph (1) of subdivision (c) of Section
28 11963.3 equals or exceeds 50 percent, the percentage calculated pursuant to paragraph (2) of
29 subdivision (c) equals or exceeds 80 percent, and the charter school's pupil-teacher ratio is equal
30 to or less than the pupil-teacher ratio of the largest unified school district in the county or

1 counties in which the charter school operates as reported pursuant to paragraph (2) of subdivision
2 (b) of Section 11963.3, the Advisory Commission on Charter Schools shall recommend to the
3 State Board of Education approval of the request at 100 percent (i.e. full funding), unless there is
4 a reasonable basis to recommend otherwise. The recommendation to the State Board shall
5 include the reasons justifying a percentage that is greater than 70 percent and, if the
6 recommended percentage is lower than the requested percentage, the reasons justifying the
7 reduction and, if appropriate, describe how any deficiencies or problems may be addressed by
8 the charter school.

9 (4) If the percentage calculated pursuant to paragraph (1) of subdivision (c) of Section
10 11963.3 is less than 40 percent, or the percentage calculated pursuant to paragraph (2) of
11 subdivision (c) of Section 11963.3 is less than 60 percent, then the charter school's
12 nonclassroom-based instruction is not substantially dedicated to the instructional benefit of the
13 students, and the Advisory Commission on Charter Schools shall recommend that the State
14 Board of Education deny the request, unless there is a reasonable basis to recommend otherwise.
15 The recommendation to the State Board shall include the reasons justifying the denial and, if
16 appropriate, describe how any deficiencies or problems may be addressed by the charter school.
17 Denial of a determination of funding request by the State Board of Education shall result in no
18 funding being apportioned for average daily attendance identified by the charter school as being
19 generated through nonclassroom-based instruction pursuant to Education Code Section
20 47634.2(c).

21 ~~(A)~~(c) The Advisory Commission on Charter Schools and/or the California Department of
22 Education may ask the charter school ~~may be requested~~ to provide additional information in
23 order to make possible a more detailed review or to develop a reasonable basis for a
24 recommendation other than those prescribed in subdivisions (a) and (b). With the consent of the
25 Superintendent of Public Instruction, the request for additional information shall be considered a
26 reasonable inquiry to which the charter school must respond pursuant to Education Code section
27 47604.3.

28 ~~(B) It may be recommended that the State Board of Education approve a determination of~~
29 ~~funding for the charter school that is lower than that requested, with the reduction reflecting the~~
30 ~~degree to which the charter school's salaries and benefits expenditures for certificated employees~~

1 ~~(as identified pursuant to sub-paragraph (B) of paragraph (5) of subdivision (b) of Section~~
2 ~~11963.2) did not equal or exceed 50 percent of the school's total public charter school revenue~~
3 ~~(as identified pursuant to sub-paragraph (A) of paragraph (5) of subdivision (b) of Section~~
4 ~~11963.2).~~

5 ~~(d) Prior to a recommendation for approval at a reduced level being made by the Advisory~~
6 ~~Commission on Charter Schools (that a determination of funding request be denied or approved~~
7 ~~at a percentage lower than that requested) being forwarded to the State Board of Education, the~~
8 ~~affected charter school shall be given a reasonable opportunity thirty (30) calendar days in which~~
9 ~~to amend its determination of funding request and/or to provide additional information in support~~
10 ~~of the request. If a recommendation is made to the State Board of Education for approval at a~~
11 ~~reduced level, the recommendation shall include the reasons justifying the reduction and, if~~
12 ~~appropriate, may describe how any deficiencies or problems may be addressed. Based upon~~
13 ~~consideration of the amended request or any additional information that may be provided, the~~
14 ~~Advisory Commission may modify its recommendation to the State Board.~~

15 ~~(C) It may be recommended that the State Board of Education deny the determination of~~
16 ~~funding request. Prior to a recommendation for denial being made to the State Board of~~
17 ~~Education, the charter school shall be given a reasonable opportunity to amend its determination~~
18 ~~of funding request and/or to provide additional information in support of the request. If a~~
19 ~~recommendation for denial is made to the State Board of Education, the recommendation shall~~
20 ~~include the reasons justifying the denial and, if appropriate, may describe how any deficiencies~~
21 ~~or problems may be addressed.~~

22 ~~(3) If a charter school's financial information submitted pursuant to paragraph (5) of~~
23 ~~subdivision (b) of Section 11963.2 shows that less than 50 percent of the charter school's total~~
24 ~~public revenues were expended (and/or are projected to be expended) for salaries and benefits of~~
25 ~~certificated employees, the review and recommendation development process may consider~~
26 ~~whether~~

27 ~~(e) A reasonable basis for the Advisory Commission on Charter Schools to make a~~
28 ~~recommendation other than one that results from the criteria specified in subdivisions (a) and (b)~~
29 ~~may include, but not be limited to, the following: the information provided by the charter school~~
30 ~~pursuant to paragraphs (2) through (8), inclusive, of subdivision (b) of Section 11963.3,~~

1 documented data regarding individual circumstances of the charter school were (and/or are) the
2 cause (e.g., one-time expenses for facilities, acquisition of a school bus, acquisition and
3 installation of computer hardware not related to the instructional program, special education
4 charges levied on the charter school by a local educational agency, restricted state, federal, or
5 private grants of funds awarded to the charter school that cannot expend for instructor salaries, or
6 contracted instructional services other than those for special education), the size of the charter
7 school, and how many years the charter school has been in operation. The Advisory
8 Commission on Charter Schools shall give charter schools with less than a total of one hundred
9 (100) units of prior year second period average daily attendance or that are in their first year of
10 operation serious consideration of full funding. For the purposes of paragraph (3) of subdivision
11 (b), the information provided by the charter school pursuant to paragraph (2) of subdivision (b)
12 of Section 11963.3 shall not be a reasonable basis for the Advisory Commission on Charter
13 Schools to make a recommendation other than one that results from the criteria specified in
14 paragraph (3) of subdivision (b).

15 (b) In reviewing a determination of funding request by a charter school or developing a
16 recommendation to the State Board of Education regarding the request pursuant to subdivision
17 (a), the California Department of Education and/or the Advisory Commission on Charter Schools
18 may request that supplemental information be submitted by the charter school. With the consent
19 of the Superintendent of Public Instruction, the request for supplemental information shall be
20 considered a reasonable inquiry to which the charter school must respond pursuant to Education
21 Code section 47604.3.

22 (c) If the review and recommendation development process for a determination of funding
23 request finds that the request substantially meets the criteria established in subparagraph (1) of
24 subdivision (a), a recommendation for approval of the request shall be made to the State Board
25 of Education. If the determination of funding request is for a percentage in excess of 95 percent
26 for 2001-02, 80 percent for 2002-03, or 70 percent for 2003-04 or any fiscal year thereafter, the
27 State Board shall be informed of the reasons justifying the requested percentage.

28 (d) If the review of a determination of funding request finds that the request substantially
29 meets one or more of the criteria established in subparagraph (2) of subdivision (a), a
30 recommendation for denial of the request or for approval with a lower than requested percentage

1 shall be made to the State Board of Education, along with a written statement of reasons for that
2 recommendation, including, if appropriate, a description of how the charter school may address
3 any problems or deficiencies.

4 (e) Notwithstanding the other provisions of this section, a request for a determination of
5 funding for a charter school that provides instructional services to members of the California
6 Conservation Corps or a local conservation corps certified by the California Conservation Corps
7 shall be recommended for approval, unless reasons justifying denial or approval with a lower-
8 than-requested percentage are identified in writing to the State Board of Education.

9 NOTE: Authority cited: Sections 33031 and 47634.2, Education Code; and Section 6 of
10 Chapter 892, Statutes of 2001 (Senate Bill 740). Reference: Sections 47604.3 and 47634.2,
11 Education Code.

12 **§11963.5. Submission and Action on Determination of Funding Requests Regarding**
13 **Nonclassroom-Based Instruction.**

14 (f)(a) Not more than 90 days following the receipt of a substantially complete
15 determination of funding request, the California Department of Education shall present the
16 request and the recommendation of the Advisory Commission on Charter Schools shall be
17 presented to the State Board of Education in accordance with subdivision (a) of Section 11963.4.
18 For 2002-03 and thereafter, a determination of funding request that will take effect within the
19 fiscal year in which it is submitted must be submitted by a charter school not later than February
20 1. The State Board of Education may grant an exception to this limitation for good cause.

21 (g)(b) If, during the effective period of a determination of funding, a charter school wishes
22 to seek a higher or lower determination of funding, it shall do so by the filing of a new
23 determination of funding request. During the effective period of a charter school's determination
24 of funding, no more than one additional determination of funding request (which would replace
25 the determination of funding then in effect) may be submitted by the charter school in the same
26 fiscal year.

27 NOTE: Authority cited: Sections 33031 and 47634.2, Education Code. Reference: Sections
28 47604.3 and 47634.2, Education Code.

1 **§~~11963.4~~11963.6. Termination of a Determination of Funding Regarding Nonclassroom-**
2 **Based Instruction.**

3 The State Board of Education may terminate a determination of funding if updated or
4 additional information requested by the California Department of Education and/or the Advisory
5 Commission on Charter Schools is not made available by a charter school within a reasonable
6 amount of time thirty (30) calendar days or if credible information from any source supports
7 termination. If the latter is the case, the charter schools shall be given thirty (30) calendar days
8 prior to the termination of funding to provide additional information to support the school's
9 determination of funding.

10 NOTE: Authority cited: Sections 33031 and 47634.2, Education Code; and Section 6 of Chapter
11 892, Statutes of 2001 (Senate Bill 740). Reference: Section 47634.2, Education Code.